

Referendum: Questions that remained unanswered

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The national referendum following the people's initiative that took place on April 16, 2000, can be rightfully described as a top event of Ukraine's current political life. While the positive answers to the referendum questions can make a radical difference to the country's political landscape, it is still rather hard to predict all possible implications of this expression of people's volition.

The key judgment on whether the questions proposed for the referendum corresponded with the Constitution of Ukraine was made by the Constitutional Court on March 29, 2000.

Of the six questions proposed by the initiative group - (1) on no-confidence to the parliament that would enable the president to dissolve it, (2) on early termination of the parliament's authority if it is unable to form the majority within one month or adopt the state budget within three months, (3) on limiting the parliamentary immunity, (4) in reducing the number of MPs from 450 to 300, (5) on creating a pi-cameral parliament, and (6) on adopting a constitution at a national referendum - the Constitutional Court, referring to Article 157 of the Constitution, recognized questions two, three, four and five as constitutional, and order to withdraw questions one and six. To end speculations about the role to be played by the referendum, the Constitutional Court announced that the referendum results were binding for all branches of power.

The voting process began on April 6. According to the law on national and local referenda, early voting was possible for those who, for solid reasons, would not be able to come to polling stations on the polling day. Remarkably, no proof of solid reasons was normally demanded. According to the Committee of Voters of Ukraine, by April 10, 2000, i.e., a week before the referendum day, the number of early votes ranged from 8 to 15% throughout Ukraine (Vechirniy Kyiv, April 13, 2000). In Kherson the proportion of early votes was relatively low - 5% (Holos Ukrainy, April 13, 2000). By the end of the week the number of early votes reached over 35%, and in some constituencies of the Kharkiv region the number of early votes was over 90%. According to head of the Central Election Commission Mykhailo Ryabets, on April 16 the target attendance of 50% of eligible voters was reached by midday. Hence, the boycott of the referendum, as most of left-wingers as well as some right-wingers urged their supporters to do, did not occur. Their efforts to halt or change the referendum process were numerous but poorly organized. Oleksandr Moroz repeatedly claimed that the Left Center faction would agitate to vote against all questions of the referendum or even not to take part in it at all (Molod Ukrainy, March 31, 2000). The position was shared by Communists. According to leader of the Communist party Petro Symonenko, their anti-referendum position intended to prevent yet another deceit of the people (Tovarishch, No. 14, March 2000). A centrist party that is currently not represented in the parliament, Vpered Ukrainoi!, repeatedly disseminated statements calling on Ukrainians to boycott the referendum (Silski Visti, April 4, 2000). Similar appeals to boycott the referendum or answer all of its questions negatively were made by some local organizations of the Rukh and the Congress of Ukrainian Nationalists.

Yet another argument in favor of the general impression of futility of the boycott efforts was offered by opinion poll results. According to an opinion poll conducted by the Kyiv International Institute of Sociology on March 16-27, 2000 in all regions of Ukraine, of 1,900 respondents representing all groups of eligible voters, 63% planned to take part in the referendum, 11% were undecided, and 26% did not intend to participate. The poll showed that the issue of introducing a pi-cameral parliament was perceived as the most controversial one. Only 23% of respondents were prepared to answer the question positively, 31% were undecided, and 25% did not support the idea. Other potential participant of the referendum has other opinions or refused to comment. According to the poll results, Ukrainian voters were more or less united as far as the issue of abolishing of the parliamentary immunity was concerned. The number of respondents prepared to support the change reached 83%, 3% were against, and 4% were still undecided.

When the referendum results were announced, they impressed not only insufficiently informed sceptics, but, probably, the people themselves who demonstrated remarkable level of unanimity and readiness to leave their weekend routine to take part in the referendum. The turnout totaled 79%, with 85% of the voters who came to the polling stations having supported the first question, 89% having voted positively on the second one, 90% approving of the change to be introduced by the third one, and 82% supporting the fourth question.

Therefore, the referendum did take place, and even the most challenged question of introduction of a pi-cameral parliament got the approval, expected by the initiators of the referendum. The first act of the play titled Referendum came to the close with a well-predicted happy end. Yet, the point is not just a possibility of a major re-organization of the whole legislative branch of Ukraine. Whether the introduction of a pi-cameral parliament may cause regionalization of Ukraine and encourage development of regional separatist trends is a matter of a separate study. Yet, there is another problem, linked to mechanisms of implementation of the referendum results and converting them into particular bills. The complex issue may have significant, yet not fully explored, implications for the political future of some representatives of Ukraine's political class as well as for the state as the whole. The strict observance of the constitutional norms in the process of implementation of the referendum results is a prerequisite for Ukraine's partnership with European institutions and a factor that will determine the internal organization and division of power in Ukraine. Although some Ukrainian officials argue that the Council of Europe is not the entire Europe, the question of Ukraine's membership in the Council of Europe remains dangerously open. One of key points of the resolution, issued by the Council of Europe after the hearings on the process of reform of political power institutions in Ukraine, is the recommendation to suspend Ukraine's membership in the organization should the referendum results be implemented in a non-constitutional way, or should the Constitution of Ukraine be amended through non-constitutional methods (Silski Visti, April 6, 2000).

Besides, using the formulation of Vice Speaker of the Verkhovna Rada Stepan Havrysh (the Vidrodzhennya Regioniv group), it is critical to ensure that the referendum is not transformed into a scalpel aimed against the responsible majority of the Verkhovna Rada (Kievskie Vedomosti, April 7, 2000). To that we could add: the parliamentary majority as well, and, therefore, the entire system of the legislative branch in Ukraine. Otherwise Ukraine will face a real challenge of introduction of a Belarussian style of organization of state power. The implications of the Lukashenka-style governance are too well known in Belarus and beyond.

Hence, a logical question is what to do with the referendum results, since, according to the verdict of the Constitutional Court, they are binding, and not consultative. Since the Constitution has no mention about holding a referendum for consultation purposes, the April 16 referendum is not just an opinion poll that cost the budget UAH 30 million. According to the verdict of the Constitutional Court of March 27, 2000 - the will of the people to be expressed at the referendum, announced by the President of Ukraine following the people's initiative, cannot be of advisory nature. Therefore, in case the people supports the provisions included in paragraphs 1, 2, 3, 4 of Article 2 of the Decree, these provisions shall become part of the text of the Constitution of Ukraine. However, according to the constitution, referred to in the verdict of the Constitutional Court, making amendments to the text of the constitution is within the authority of the Verkhovna Rada (the parliament) only. For instance, the question of introducing a pi-cameral parliament, described by First Vice Speaker Victor Medvedchuk as a political one, demands relevant proposals to be made for amending the constitution. Therefore, at least 32 articles of the Fundamental Law will have to be amended!

Meanwhile, making real steps towards such amendments as a result of the referendum are likely to be very complex legally. While Article 44 of the law on the national and local referenda stipulates that decisions adopted at a referendum should be directly introduced into the Ukrainian legislation after being officially announced by the Central Election Commission, today the predominant opinion is that the referendum results should be confirmed by the parliament, as the verdict of the Constitutional Court demands.

Consequently, there is yet another major problem linked to a possible constitutional crisis in Ukraine that may have far-reaching aftermath. This view is shared by Permanent Representative of the President of Ukraine in the parliament Roman Bezsmertnyi. Commenting on possibilities to implement the referendum results into the Ukrainian legislation, he noted that currently there are two positions. One, formalized by the verdict of the Constitutional Court, is that the decisions of the referendum are binding for all and must be complied with. The other is that the decisions, in fact, should be made by the parliament. (Ukraina Moloda, April 12, 2000). A similar opinion has been expressed by Victor Medvedchuk, who argued that there is no definite single answer as to how the referendum results would be implemented (Ukraina Moloda, April 12, 2000).

To implement the binding referendum results, the parliament will have adopt decisions by at least 300 votes, i.e., the constitutional majority necessary to approve proposed amendments to the constitution. Yet there may be a clear shortage of supporters of such amendments. Currently the majority consists of only 276 MPs. The still numerous minority has been steadily negative about the referendum in general and its individual issues in particular. Possibly, communists and socialists will continue to boycott efforts to ensure implementation of the referendum results. The 115-strong Communist faction, the largest and the best-organized in the parliament, announced its intention to oppose implementation of

the changes. Therefore, securing the necessary 300-plus votes by means of convincing some representatives of the minority to support the referendum results may be problematic. According to a Communist leader Stanislav Hurenko, the Constitutional Court's verdict on the referendum has planted a time mine. The referendum results are binding and, therefore, must be legalized through amendments in the constitution. Such amendments may be made by the Verkhovna Rada of Ukraine alone after multiple debates and expertise of the Constitutional Court - by 300 votes of MPs, and that most likely, there is a new stage of confrontation between the legislature and the executive branch ahead...

(Kommunist, No. 14, April 2000). This forecast adds little optimism as far as hopes for fast and easy settlement of the above problems are concerned. On the other hand, the fact that over 80% of voters who took part in the referendum approved of each of the referendum questions proves that among them there must be many voters who had supported communists and other left-wingers in the recent elections, and that the parliamentary minority cannot simply ignore their opinions.

Developing this theme, Victor Medvedchuk noted: as a lawyer, I cannot answer what will happen if the Verkhovna Rada and the Central Election Commission fail to fulfill what will have been voted for and adopted by the April 16 referendum. No current law envisages such liability either of the President, or the Verkhovna Rada, or the Central Election Commission. (Holos Ukrainy, April 5, 2000). Most likely, the problem of shortage of the parliamentary majority will not be solved after the by-elections due on June 25, 2000, although there are realistic hopes that the majority ranks would grow. According to Presidential chief of staff Volodymyr Lytvyn, the by-elections will be a factor that will define the political process in the near future (Den, April 1, 2000). This factor will also be characteristic of the nature and strength of political forces and Ukrainian political parties' electoral potential. Yet, even if the parties and groups that constitute the parliamentary majority will manage to win the by-elections, 10 new MPs that would probably join the majority will not help to gather the needed 300 MPs. It is rather hard to predict what will happen if the parliament proves to be unable to implement the referendum results and amend the constitution. The failure may give reasons to expect a new parliamentary crisis or even efforts to dissolve the parliament - an action that is not envisaged by any current law. However, the situation may develop in a way predicted by Volodymyr Lytvyn: if the parliament fails to implement the referendum results Leonid Kuchma, as the guarantor of the constitution, will act adequately (Ukraina Moloda, April 12, 2000). Meanwhile, the guarantor of the constitution himself told the press on the referendum day that the referendum should not be the last one in the nation's life...

Yet, this is not the end of the list of problems. There is yet another question whether the fact that the parliament will debate the decisions of the referendum can be viewed as usurpation of power. At least this is the way some experts describe it, referring to Article 5 of the Constitution, according to which the people of Ukraine is the exclusive holder of sovereignty and the only source of power in this state. Under the Constitution, the people exercises its power directly and through bodies of state power and local self-governance. The right to determine and change the constitutional order in Ukraine belongs to the people alone and cannot be usurped by the state, its bodies or civil servants. If the people, for instance, voted for abolition of parliamentary immunity, and MPs debate what decision they should make, it may be interpreted as putting the parliament in opposition to the will of the people. Therefore, as Victor Medvedchuk puts it, in this case, does a state body, that is the Verkhovna Rada, have the right to change the opinion of the people or respond to the voters' position in some other way? It seems to me this is a matter of usurpation of power. He went on to say that even if the parliament approves a positive decision, is not this duplication of the volition of those who today are the only source of power in Ukraine? (Ukraina Moloda, April 12, 2000). To date there has been no legally accurate answer to these questions. Given the obvious problems and contradictions, the interested parties will probably have to seek interpretation from the Constitutional Court.

Hence, there are still more questions than answers concerning the referendum following the people's initiative and its implementation mechanisms. Hopefully, the situation will not lead to a deadlock that could result in increase of tension and general destabilization. In the midst of the protracted economic crisis, consequences of political destabilization may be far more dangerous and irreversible than it appears.